IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	**Case No. 97-40458**
RANSOM ANGUS RANCH,	)	
	)	
Debtor.	)	
_____	)	
	)	
RANSOM ANGUS RANCH, an Idaho partnership,	)	**Adv. No. 98-06105**
	)	
Plaintiff,	)	**MEMORANDUM OF DECISION RE DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
FIRST SECURITY BANK, N.A.,	)	
	)	
Defendant.	)	
_____	)	

Brent T. Robinson, LING, NIELSEN AND ROBINSON, Rupert, Idaho, for Plaintiff.

Mark B. Perry, HOWARD ELLSWORTH IPSEN & PERRY, Boise, Idaho, for Defendant.

Background.

Plaintiff Ransom Angus Ranch brought this action against Defendant First Security Bank alleging that Defendant (1) violated the covenant

of good faith and fair dealing in breaching certain oral contracts between parties (Counts I and II); (2) failed to cover certain checks in the fall of 1996 that resulted in damage to Plaintiff's credit (Count III); (3) was guilty of misrepresentation concerning the timing of certain loans (Count IV); (4) was negligent in administering loans made to Plaintiff (Count V); and (5) either negligently or intentionally killed one of Plaintiff's calves during an inspection in May 1998 (Count VI).

Defendant has moved for partial summary judgment. Following briefing of the issues by the parties, and a hearing before the Court on February 24, 1999, the matter was taken under advisement.

Facts.

The following appear to be undisputed, material facts.

Plaintiff is an Idaho partnership consisting of partners Max and Rodney Ransom ("Ransoms"). The partnership conducts business in Bingham County. On March 16, 1998, Plaintiff sued Defendant in state court. Plaintiff filed for Chapter 12 bankruptcy relief on May 8, 1997. Defendant filed a Notice of Removal of the state court action on April 16, 1998.

Beginning in November 1990, Plaintiff obtained financing for its ranching operations from Defendant. Plaintiff received several loans from Defendant and the parties' credit relationship continued without dispute through 1994. In late 1994 and early 1995, Ransoms met with Wylie Powell ("Powell"), one of Defendant's loan officers. The two sides discussed financing for Plaintiff's 1995 operations. Plaintiff, based on certain budget information, was seeking to borrow approximately $40,000 to $48,000. On or about March 1, 1995, Ransoms contacted Powell to check on the status of the loan and to determine when the loan would be approved. Powell informed Ransoms that the loan documents would be ready to sign within approximately two weeks. A loan was ultimately approved in late April, the loan documents were signed on May 15, 1995, and a promissory note was executed for $106,170. A portion of this amount was for carryover from 1994. Defendant covered four of Plaintiff's checks between the time the loan was approved and the time the documents were signed. These checks would not have otherwise cleared Plaintiff's account.

Early in 1996, Ransoms once again met with Powell to discuss an operating loan for the year. Plaintiff requested operating funds of approximately $46,000. The 1996 loan documents were signed by the parties on June 24,

1996. Prior to closing the 1996 operating loan, several modifications had been made to the terms of prior loans which had not been repaid. First, on January 10, 1996, Plaintiff and Ransoms executed a modification whereby the amount of the 1995 note was increased by $24,000 and the maturity date was extended to April 5, 1996. On May 29, 1996, the parties agreed to extend the due date on an annual payment due on an equipment loan from 1993 until July 27, 1996. On June 24, in addition to executing the operating loan, the parties agreed to an extension of the maturity date on the 1995 operating loan to October 5, 1996 and extended the annual payment due on the 1993 equipment loan to October 27, 1996. The 1995 operating loan was once again modified on November 27, 1996, extending the maturity date to December 5, 1996.

Applicable Law.

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure, made applicable here by F.R.B.P. 7056. Summary judgment is appropriate if, after viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact remaining and the moving party is entitled to judgment as a matter of law.

F.R.B.P. 7056; *State Farm Mutual Auto Ins. Co. v. Davis*, 7 F.3d 180, 182 (9th Cir. 1993); *FSLIC v. Molinaro*, 889 F.2d 899, 901 (9th Cir. 1989).

Discussion.

Plaintiff asserts that because Defendant failed to prepare the loan documents for the 1995 and 1996 operating loans in a timely fashion that Plaintiff was unable to plant 145 acres of peas and oats. As a result, Plaintiff allegedly sustained net losses of approximately $81,852 in 1995 and $107,152 in 1996.

Defendant moves for partial summary judgment[1] asserting that Plaintiff waived any and all claims against Defendant by signing the written loan documents that contained a waiver clause; that Plaintiff ratified any contract allegedly obtained by fraud by accepting the benefits of the contract; and that Idaho law does not allow for a negligence claim under these particular circumstances. These arguments are addressed separately below.

1. Waiver.

Defendant asserts Plaintiff waived any right to pursue the claims stated in Counts I, II, IV, and V of the Complaint by executing the various loan

[1] Defendant's motion relates to Plaintiff's claims asserted in Counts I, II, IV, and V of its Complaint. Counts III and VI are not addressed by Defendant's motion.

documents and modification agreements. The agreement signed by Ransoms on behalf of the Plaintiff on June 24, 1996, which is similar to the modification agreements executed on October 1 and November 27, 1996, provides that:

> As part of the consideration for this Agreement, Borrower, for themselves and for their heirs, personal representatives, successors and assigns, do hereby remise, release and forever discharge Bank and its officers, employees, directors, and stockholders of and from all manner of actions, causes and causes of action, suits, debts, sums of money, account reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgements [sic], executions, claims, and demands whatsoever, at law or in equity, and particularly, without limiting the generality of the foregoing, all claims relating to the loan transactions aforesaid, the Loan Agreements, the Loan Documents, and this Agreement, which Borrower, their heirs, personal representatives, successors, assigns, and agents ever had, now have, or may have in the future for, upon, or by reason of any matter, cause or thing whatsoever; Borrower further hereby waives any and all defenses, offsets, and counterclaims to Bank's enforcement of the Loan Documents or the 1996 Note or any action by the Bank to foreclose any security interest, whether secured by real or personal property.

Affidavit of Defendant's Counsel in Support of Motion for Partial Summary Judgment, Exhibit F: Loan Agreement dated June, 24, 1996, p. 2, ¶ 8.

Courts will generally not permit a party to avoid contractual obligations absent a showing that the contract produces an unconscionable

result, is unlawful, or is contrary to public policy. *Smith v. Idaho State University Federal Credit Union*, 760 P.2d 19, 23 (Idaho 1988). Plaintiff offers several reasons why it should be excused from the effect of the waiver clause set forth above. Plaintiff asserts that the contract was signed under economic duress. In addition, Plaintiff argues that application of the provision would result in an unconscionable result.

In order to establish economic duress, a party must prove, by clear and convincing evidence, *Saint Alphonsus Regional Medical Center, Inc. v. Krueger*, 861 P.2d 71, 77 (Idaho Ct. App. 1992), that it involuntarily accepted the terms of the contract offered by the other party; that there were no other alternatives under the circumstances; and that the circumstances were created by and a result of coercive acts by the other party. *Isaak v. Idaho First National Bank*, 812 P.2d 295, 296 (Idaho Ct. App. 1990). "A contract entered into under duress is not void, but merely voidable, and may be ratified by subsequent acts of the party claiming duress." *Clearwater Construction & Engineering, Inc. v. Wickes Forest Industries*, 697 P.2d 1146, 1149 (Idaho 1985). The party claiming duress ratifies the contract when it intentionally accepts the benefits of the contract, recognizes the validity of the contract by acting upon it, or acquiesces

to the contract by silence or by failing to avoid the provisions after an opportunity to do so.

In this case, even assuming that Plaintiff could establish that the Ransoms executed the agreements containing the waiver clause under duress, the record is clear that Plaintiff ratified the contracts that gave rise to the claims in this adversary proceeding. With respect to both the 1995 and 1996 operating loans, while Plaintiff contends that, in accordance with oral contracts, the operating loan funds were to be advanced at an earlier date, Plaintiff accepted the funds at the later date and used the funds in operation of its ranch, albeit not in the production of peas and oats. Not only did Plaintiff accept and use the funds provided by Defendant, Plaintiff thereafter continued its credit relationship with Defendant and benefitted from several modifications and extensions of payment due dates to the original agreements.

Plaintiff alleges that the duress occurred in connection with the June 24, 1996 agreement when Powell supposedly threatened that Defendant would not cover Plaintiff's checks that would otherwise have bounced if Plaintiff did not execute the loan document containing the waiver. Ransoms allegedly felt forced to sign the agreement on behalf of Plaintiff and as personal guarantors. Defendant disagrees. *See First Security Bank of Idaho v. Murphy*,

964 P.2d 654, 659 (Idaho 1998)(signature on loan supported the application of waiver, estoppel, ratification and other equitable grounds to prevent signator from raising breach as a defense).

Plaintiff's execution of the loan documents containing the waiver clause under the circumstances shown in this record are properly viewed more as a means of satisfying Plaintiff's needs than as a result of any oppressive or wrongful conduct by Defendant. *Saint Alphonsus Regional Medical Center, Inc. v. Krueger*, 861 P.2d 71, 77 (Idaho Ct. App. 1992). If Plaintiff knew it was too late to plant peas and oats when the 1995 and 1996 loans were executed then why did Plaintiff follow through with the loans? Simply put, Plaintiff had other operating needs to which the loan proceeds were to be applied. It is interesting to note that in 1995 Plaintiff planted 74 acres of peas and oats. These crops were planted in mid to late May. In his deposition when asked if Plaintiff needed the 1995 operating loan in March, which was earlier than usual, in order to plant peas and oats, Max Ransom replied in the negative. Affidavit of Defendant's Counsel in Support of Motion for Partial Summary Judgment, Exhibit C: Deposition of Max Ransom at p. 62, lines 3-6. Max then explained that the money was needed in March because the farm was out of money. *Id.* at lines 7-12. Therefore, the 1995 loan was executed in order to satisfy Plaintiff's dire

financial needs and was not a product of any oppressive or wrongful conduct by Defendant.

Plaintiff signed other documents containing a similar waiver, namely the modification on November 27, 1996. That modification agreement was executed by the Ransoms without any pressure concerning pending checks that may bounce. Plaintiff had been through the process with Defendant before and once again needed the modification in order to meet the current financial obligations of the farm. There was no duress surrounding the signing of the November 27, 1996 modification. Therefore, Plaintiff, as a matter of law, cannot use duress as a defense to the excuse itself from the obligations contained in the contracts executed with Defendant.

Plaintiff also asks the Court to invoke its equitable powers to relieve it from the allegedly unconscionable results of enforcing the waiver provision. There are two basic types of unconscionability, procedural and substantive. "Procedural unconscionability relates to the bargaining process leading to an agreement such as a note." *Smith v. Idaho State University Federal Credit Union*, 760 P.2d 19, 23 (Idaho 1988). On the other hand, substantive unconscionability deals more with oppression, unfair surprise, and terms that are one-sided. *Id.*

In 1995 and 1996, Plaintiff continually renegotiated maturity dates and obtained numerous extensions of payment due dates on its loans with Defendant. The fact Plaintiff was able to obtain these concessions is evidence that, contrary to its argument, Plaintiff had considerable bargaining power in dealing with Defendant, or at least, that there was no clear disparity of bargaining power between the two. Thus, Plaintiff cannot use procedural unconscionability as a defense to the enforcement of the waiver provision at issue.

Similarly, the terms of the various agreements, including the waiver provision, were not so one-sided as to require equitable relief given the lending relationship between the parties at the time the agreements were signed. *See Walker v. American Cyanamid Company*, 948 P.2d 1123, 1128 (Idaho 1997) (unconscionability measured at the time of contracting). Ransoms were not unfairly surprised by the waiver provision, especially the one found in the November 27, 1996 agreement. Recall, Ransoms had already seen and agreed to a waiver as part of the June 24, 1996 agreement. When the November agreement was executed, Ransoms had already signed at least two other agreements containing a similar waiver provision. Thus, Plaintiff cannot use substantive unconscionability as a defense to the waiver provisions.

Having found that as a matter of law Plaintiff is subject to the waiver provision contained within the agreements executed with Defendant, Plaintiff is entitled to summary judgment as to any and all the claims brought against Defendant in the counts subject to Defendant's motion.

2. Oral Contracts.

In addition to the written financing contracts the parties executed, Plaintiff alleges that there were separate, oral agreements reached between them that, for the most part, governed the timing of the loans. The first oral contract Plaintiff alleges was made in March of 1995 when Powell told Ransoms that the loan documents would be ready to execute by mid-March. In fact, the paperwork was not ready in March, and the loan was not closed until May 15, 1995.

Defendant asserts that the parol evidence rule prohibits the introduction of any evidence of any alleged oral agreement between the parties that contradicts the terms of the written contract. Under the parol evidence rule, when preliminary negotiations of the contracting parties are later reduced to a formal writing, the writing supersedes all previous negotiations and understandings between the parties, and the written contract is deemed to reflect the intent of the parties. *Valley Bank v. Christensen*, 808 P.2d 415, 417

(Idaho 1991). "It is well established in Idaho that 'oral stipulations, agreements, and negotiations preliminary to a written contract are presumed merged therein and will not be admitted to contradict the plain terms of the contract.'" *Id.* (quoting *Ringer v. Rice*, 540 P.2d 290, 293 (Idaho 1975)). The rule applies only when the writing is fully integrated, meaning that all prior negotiations and agreements are integrated into the written document. "A merger clause in a written agreement is one means of proving the integrated character of a writing." *Chambers v. Thomas*, 844 P.2d 698, 701 (Idaho 1992).

In this case, the June 24, 1996 loan agreement contains a merger clause providing in part that:

> This Agreement is the final expression of all the parties' agreements regarding these loans and their restructuring and supersedes all prior or contemporaneous negotiations, understandings, and agreements between the parties, whether oral or written. Any prior oral promises, representations, waivers, and courses or conduct are not relied upon and are of no further effect.

This clause is sufficient to fully integrate the writings executed by the parties with respect to the 1996 operating loan. The modification agreement executed on January 10, 1996, contains a similar merger clause with respect to the 1995 operating loan. While the oral promises asserted by Plaintiff are somewhat vague and are denied by Powell and Defendant, even if the Court assumes that

oral promises were made to Plaintiff by Defendant, the promises were superseded by the written contracts executed between the parties. Thus, as a matter of law, any oral promise or contract that related to the loan transactions of 1995 and 1996 were merged into the written contracts and are unenforceable.

Plaintiff alleges that Defendant breached the covenant of good faith and fair dealing with respect to the 1995 and 1996 oral contracts. The covenant of good faith and fair dealing is an obligation implied in every contract. *Taylor v. Browning*, 927 P.2d 873, 880 (Idaho 1996). However, since any oral contract between Plaintiff and Defendant was merged into the final written document, Plaintiff cannot base an allegation of breach of the obligation of good faith and fair dealing on those oral contracts.

3. Fraud.

Plaintiff also claims Defendant is guilty of fraud as to the alleged oral promises it made to Plaintiff in 1995 and 1996. Plaintiff argues that Defendant's agent's representations that financing would be approved and funds supplied early enough in the season for Plaintiff to plant peas and oats were intentionally false and constitute fraud. Generally, a claim for fraud must be based on representations concerning past or existing material facts. *Magic Lantern Productions, Inc.v. Dolsot*, 892 P.2d 480, 482 (Idaho 1995).

Representations which consist of promises or statements concerning future events will not serve as a basis for a fraud claim even if those same representations would support an action for fraud had they dealt with past or existing material facts. *Mitchell v. Barendregt*, 820 P.2d 707, 713 (Idaho Ct. App. 1991).

Here, Powell's statements concerning the timing of the funding of the loans, assuming Powell made such statements, clearly relate to a future event, that is, when the loan documents would be ready for execution and the loan funds would be available. While Plaintiff could, and has, argued that Defendant's conduct constitutes a breach of contract with respect to Powell's statements, the allegedly broken oral promises do not give rise to an action for fraud.

4. Negligence.

Finally, Plaintiff has asserted that Defendant was negligent in administering its loans. The elements of common law negligence are (1) a duty recognized by law that requires the defendant to conform to a particular standard of conduct; (2) a breach of defendant's duty; (3) a causal connection between defendant's conduct and the resulting injury; and (4) actual loss or damage. *Eliopulos v. Knox*, 848 P.2d 984, 992 (Idaho Ct. App. 1992). "As a

general rule, no cause of action lies against a defendant whose negligence prevents the plaintiff from obtaining a prospective economic advantage." *Just's Inc. v. Arrington Construction Company, Inc.*, 583 P.2d 997, 1003 (Idaho 1978). Purely economic damages are too speculative for recovery under a negligence claim. *Id.*

Here, the damages claimed by Plaintiff are purely economic in nature. Plaintiff contends that because Defendant was negligent in administering its loan, and because Plaintiff was not given the loan proceeds in a timely manner, that Plaintiff sustained lost profits of $81,852 in 1995 and $107,152 in 1996. Under the case law, whether Plaintiff would have incurred these claimed damages is clearly speculative.

The court in *Just's* recognized that recovery of economic damages based on negligence may be allowed only in those narrow circumstances where a special relationship exists between the parties. 583 P.2d at 1004. In *Eliopulos*, the court explained that this special relationship exception would generally pertain only to professionals providing personal services to the claimant, "such as physicians, attorneys, architects, engineers and insurance agents." 848 P.2d at 992. The court observed that "no such relationship exists between banks and their customers." *Id.* Since the damages claimed here are

purely economic in nature, rather than actual damages, Plaintiff, as a matter of law, is not entitled to recover such damages under a negligence theory.

Conclusion.

For the reasons set forth above, Defendant's Motion for Partial Summary Judgment should be granted as to Counts I, II, IV, and V of Plaintiff's Amended Complaint. Plaintiff's remaining claims must proceed to trial. Counsel for Defendant shall submit an appropriate order for entry by the Court.

DATED This _____ day of April, 1999.

_____
JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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ADV. NO.: 98-06105

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By_____
Deputy Clerk